Supreme Court, U.S.
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**IN THE SUPREME COURT OF THE UNITED STATES**

**Case No. _____**

ALSC No. 1060813

JANICE ABNER,

Petitioner;

v.

THE SUPREME COURT OF ALABAMA,
MOBILE INFIRMARY MEDICAL CENTER, et al.
Respondent

**On Review of the Decision By the Supreme Court of Alabama**

# PETITION FOR WRIT OF CERTIORARI

Janice Abner, In Pro Se
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## QUESTIONS FOR REVIEW

1. Whether 42 U.S.C. §1981 provided the right for petitioner to sue medical defendants for breach of contract?

2. If or not a question of broad public interest was presented in issues for review by the Alabama court of final jurisdiction to require equal protection of law under Amendment Fourteen?

3. Whether or not the decision denying writs resulting in denial of civil rights can be sustained by the Tenth Amendment of the United States as to rights and sovereignty of states?

## PARTIES - STATEMENT OF CORPORATE DISCLOSURE

Janice Abner, Petitioner
Brian K. Arcement, M.D.
Jeffrey K. Ikler, M.D.
J. Donald Kirby, M.D.
Gregory S. McGee, M.D.
J. Michael O'Dowd, M.D.
Maher N. Sanawneh, M.D.
Phillip S. Travis, M.D.
Terry Wilsdorf, M.D.
Mobile Infirmary Medical Center, Co-Defendant

## STATEMENT OF CORPORATE DISCLOSURE

The petitioner, Janice Abner, is a private individual. Parties of persons are in private practice of medicine in privately owned non-corporate businesses. The Mobile Infirmary Medical Center is a privately owned non-corporate business.

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## PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner/Appellant, Janice Abner respectfully petitions the Supreme Court of the United States for Certiorari reversing the decision by the Supreme Court of Alabama affirming the refusal by the lower appellate court to assume jurisdiction over a timely appeal.

Date: October 10, 2008 Respectfully submitted.

Janice Abner

Janice Abner, Petitioner

## STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction over this matter pursuant to **28 U.S.C., §1331** (Federal question) and **28 U.S.C. §1343(3)** Civil Rights. The judgement by the Supreme Court of Alabama denying writ of Certiorari was entered on 08/08/08.

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN CASE

**42 U.S.C. §1981(a)** provides, "All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enter contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of the persons and property as is enjoyed by white citizens."

**Amendment XIV, §1**, provides, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

**Amendment X,** The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.

## STATEMENT OF CASE

This case arises from an order by the trial court disposing of the underlying complaint for alleged wrongful death and medical malpractice against medical parties, the refusal by the lower appellate court to assume jurisdiction over a timely appeal and affirmation of the decision by denial of writ of certiorari by the Supreme Court of Alabama.

The underlying complaint dismissed on ground of lack of standing alleged breach of medical agreement and unauthorized intervention by associate physicians, resulting in misdiagnosis and death of biological mother.

Trial effectuating remedy was also sought by fact numerous friends of petitioner still reside in Alabama. Petitioner was a former resident of Alabama.

Petitioner as an African American female was similarly situated by formal education to medical defendants, but of different race and gender classification.

No estate existed at the time underlying action commenced as parent five years prior to death conveyed deed to property of only home to petitioner as sole heir. Property was sold after

death and proof was offered by legal document of inexistence of estate and other heirs.

Pursuant to Alabama case law arising from Alabama Power Co. v. White, a person bringing a wrongful death action is only required to prove capacity and standing to bring action. Because there was no estate and due to circumstance of next of kin, petitioner had standing and capacity to bring suit.

Petitioner was forced to bring action in pro se due to inability to secure attorney by fact, three (3) Peer Review Organizations (PRO) of Alabama did prior dismiss pre-trial complaints against multiple medical defendants. Complaints were dismissed despite requirement by Alabama law that norms of the national medical community be utilized for determination of standard of care.

The petitioner did seek review of the orders by petition for writ by a court of first jurisdiction. This writ was subsequently denied.

Petitioner prior to disposition obtained an expert medical witness from California who previously wrote an opinion and autopsy report based on hospital medical records indicating negligence by medical parties, and breach of medical contract and duty.

Subsequent to disposal of underlying wrongful death action, a notice of appeal was filed. The defendants moved to dismiss action on grounds

appeal was untimely, the basis pro offered lack of standing and failure to establish diversity of citizenship.

Prior to move the appellate court to deny appeal, a motion to the court of first jurisdiction seeking order to declare notice date of appeal as delinquent was denied defendants. No appellate review was sought by defendants of order.

The instance in which pleadings of violation of civil rights under "**42 U.S.C. §1981(a)** were presented in pleading entitled "Plaintiff's Reply In Opposition To Motion by Brian Arcement, Donald Kirby, etc.," p. 10, pargh. 1. 09/12/06.

The appeal filed by petitioner was transferred on 12/06/06, by the Supreme Court of Alabama to the Court of Civil Appeals. The lower appellate court refused to assume jurisdiction over the matter. The lower appellate court through the court clerk unofficially granted motions by defendants to deny appeal, and denied reconsideration by petitioner denied.

The matter of denial of civil rights under §1981 was raised in pleadings to the lower appellate court in response pleading titled, "Affirmative Defenses by Appellant in Opposition to Motions by Defendants," p.p. 3 & 4, 12/26/06.

On 02/27/07, a petition for writ of certiorari was filed with the Supreme Court of Alabama seeking review and certiorari. The instance in

which petitioner invoked rights under **42 U.S.C., §1981** was by Petition for Review, 02/23/07, p. 5, pargh. 9.

On 03/07/08, the lower appellate court affirmed order by the trial court denying extraordinary writ seeking review of decisions by PRO dismissing pre-trial agency complaints against medical parties.

On 08/08/08, the Supreme Court of Alabama denied writ of certiorari seeking review of actions by the Court of Civil Appeals refusing to assume jurisdiction over appeal of underlying order.

The Supreme Court of Alabama decided response pleadings by defendants regarding issues in writ were unrequited.

The matter regarding denial of appeal and trial as denial of civil right was raised at the lower appellate level rights in pleading in citing **42 U.S.C., §1981.** (Petition for Review, p. 3, pargh. 1 & 2 dated 02/27/07).

## REASONS WHY A WRIT SHOULD ISSUE

### A. The Writ Should Issue To Advance National Matter Of The Accountability Of Physicians As Well As A Constitutional Right Of The Petitioner

The petitioner had standing to bring a wrongful death, medical malpractice action based in part on breach of medical contract and duty. Pursuant to Alabama law, the petitioner had standing to bring a wrongful death action seeking effectuation of remedy to improve medical practices of defendants, Alabama Power Co. v. White, 377, So. 2d, 930-934, Ex Parte Ghafary, M.D., et al. v. Korn, M.D., et al., 738 So. Rptr. 2d, 778, 782 Id. 779. The right to such action existed pursuant to **42 U.S.C., §1981(a)** which serves to enforce equal rights in employment contracts, and has been used to challenge the equal protection of the law regarding race discrimination, Gratz v. Bollinger, 123 S. 2411, 2431 (2003).

**42 U.S.C., §1981(a)** provides, "All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enter contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of the persons and property as is enjoyed by white citizens."

The writ denied petitioner by the Supreme Court of Alabama arose from refusal by the lower court of appeals to assume jurisdiction over a timely appeal after defendants asserted plaintiff had no standing. Appellant-plaintiff as contends offered proof to the contrary to bring action.

Petitioner also contends inference may be formed from facts in this petition that the decision to deny writ granting rights to sue medical defendants arose from the fact petitioner was of a different racial classification than defendants. The action sought remedy out of concern for other citizens of Alabama where petitioner is a native.

The sovereignty of states under the Tenth Amendment does not supersede the laws of Congress; the Tenth Amendment does not make any substantive change to the constitution, and may not be used to deny equal protection of the law based on United States v. Darby, 312, U.S. 100,657, (1941).

> "From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." Quoting Mr. Justice Stone, Id Pg. 124.

Contention is made that the decision by the Supreme Court of Alabama to deny certiorari was discriminatory. "Purposeful discrimination that violates the Equal Protection Clause of the Fourteenth Amendment will also violate the §1981." Gratz v. Bollinger, 123 S. Ct. Rptr. 2411, 2431, (2003), quoting Justice Ginsberg, Id Pg. 539.

A contends the judgement by the Supreme Court of Alabama denying writ to affirm the refusal to assume jurisdiction over appeal by the lower Appellate Court of Alabama denied the equal protection of the law under law. The writ affirmed the purposeful discrimination by the lower appellate court."

An adverse judgement that has a discriminatory effect may constitute purposeful discrimination when rendered not to sustain or advance a legitimate state goal or national interest. Gratz, Id. 2415, Lockery v. Kayfetz, 917 F. Rptr., 2d, Pg 1150-1157, (1990).

The medical malpractice laws of Alabama express clearly a compelling public interest for efficiency in medical practices according to national norms. This section clearly states standard of medical care by physicians of Alabama must comport with National Community, Hawkins v. Carroll, 676 So. 2d. 338, 1996 Ala. Civ. App., Lexus 130 (Ala. Civil App. 1996).

There is an expressed interest in Alabama by its laws to promote proficiency in practice by its medical doctors and hospitals whereby judgment denying trial did not promote interests of the state.

## Conclusion

For all purposes based on pleadings and facts petitioner respectfully requests the Honorable Supreme Court of the United States grant Certiorari reversing the order by the Supreme Court of Alabama affirming denial of appeal to bring case for wrongful death.

Date: 11/06/2008

Janice Abner

Janice Abner, Petitioner

## APPENDIX 1

## DECISION OF THE SUPREME COURT OF ALABAMA

**Date:** August 8, 2008, Case No. 1060813; The Judgement entered by the Supreme Court of Alabama denying Writ. "Ex Parte Janice Abner. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Janice Abner v. Mobile Infirmary Medical Center et al.) (Mobile Circuit Court: CV 06-2673; Civil Appeals: 2060218).

CERTIFICATE OF JUDGEMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied. PARKER, J. - Cobb, C.J., and See, Woodall, and Smith, J.J., concur. **Exhibit 1.**

## APPENDIX 2

## DECISION BY THE CLERK OF THE COURT OF CIVIL APPEALS

**Date:** January 23, 2007, Case No. 2060218: Decision by the Court Clerk of Civil Appeals of Alabama Re: Janice Abner v. Mobile Infirmary, et al. (Appeal from Mobile Circuit Court: CV 06-2673) **Notice by Court of Civil Appeals of Alabama.** IT IS ORDERED, by the Court of Civil Appeals that the appeal in the above styled cause be, and the same is hereby Dismissed On Motion Of Appellees, Michael O'Dowd, M.D., and Phillip Travis, M.D. - No Opinion.

IT IS FURTHER ORDERED, that the appellant and sureties for the costs of appeal pay the costs of appeal in the court below. (I, John H. Wilkerson, Jr., Clerk for the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court. Witness my hand this 24rd day of January, 2007. John H. Wilkerson, Jr.) **Exhibit 2.**

## APPENDIX 3

## DECISION BY THE CLERK OF COURT OF CIVIL APPEALS OF ALABAMA

**Date:** January 9, 2007, Case No.: 2060218. Decision by the Court Clerk of Civil Appeals of Alabama Re: Janice Abner v. Mobile Infirmary, et al. (Appeal from Mobile Circuit Court: CV 06-2673) **Notice by Court of Appeals of Alabama.**

"You are hereby notified that the following action was taken in the above cause, by Court of Civil Appeals. Motion to Dismiss filed by appellees Gregory McGee, Jeffrey Icker, Donald Kirby, M.D., Terry Wilsdorf, M.D., Maher Sahawneh, M.D, Brian Arcement, M.D., and Mobile Infirmary Association d/b/a/ Mobile Infirmary Center are granted. They are dismissed as appellees in this appeal. (Although requested, no opinion by the court ever received). **Exhibit 3.**`